

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

CRACKER BARREL OLD COUNTRY STORE,
INC.

Plaintiff,

vs.

CINCINNATI INSURANCE COMPANY,

Defendant.

No: 3-07-303

Judge John T. Nixon

Magistrate Judge John S. Bryant

**CRACKER BARREL OLD COUNTRY STORE, INC.'S OBJECTIONS
TO THE BILL OF COSTS SUBMITTED BY CINCINNATI INSURANCE COMPANY**

Plaintiff, Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), respectfully submits the following objections to the Bill of Costs dated October 20, 2011 and proposed by Cincinnati Insurance Company ("Cincinnati"). Cracker Barrel's objections are based on three issues with Cincinnati's Bill of Costs: (1) Fees for exemplification and copying costs are insufficiently explained to support a Bill of Costs; (2) There are duplicative invoices for the same charges included in the Fees for printed or electronically recorded transcripts; and (3) Cincinnati includes improper "late fees" in its Bill of Costs.

A. Fees for exemplification and copying costs are insufficiently explained to support a Bill of Costs

Cincinnati has claimed a total amount of \$913.95 under this heading, which purportedly is for copies of papers necessarily obtained for use in this case. However, Cincinnati has made no showing whatsoever of the nature of the documents for which it has claimed copying expenses or that the documents were "necessarily obtained for use in the case." Therefore, this claim for copying costs should be denied.

See *McMillan v. United States*, 891 F. Supp. 408, 415 (W.D. Mich. 1995), in which the court denied photocopying costs under this category in the amount of \$114.50, because the claimant had not met his burden in proving that the documents were necessarily obtained for use in the case.

B. There are duplicative invoices for the same charges included in the Fees for printed or electronically recorded transcripts

Cincinnati mistakenly included two duplicative invoices in its Bill of Costs both of which relate to the deposition of Hardin Kimmel. The first invoice, for \$1618.85, included all charges for the deposition with the exception of shipping and handling. The second invoice, for \$79.05, related solely to the shipping and handling charges for the Kimmel deposition transcript, but stated a “Balance Due” of \$1697.90. This balance due is simply the total of the \$1618.85 from the original invoice plus the \$79.05 from the second invoice.

Cincinnati mistakenly included the *full total* from both invoices in calculating the “Fees for printed or electronically recorded transcripts.” Thus, Cincinnati’s Bill of Costs is overstated by at least \$1618.85.

C. Cincinnati includes improper “late fees” in its Bill of Costs

Each of the three deposition-related invoices submitted with Cincinnati’s Bill of Costs includes both a “Balance Due” charge and a greater fee if the charge is not paid until after a certain date. For the David Koon deposition, the difference was an additional \$129.38 for late payment. For the Dennis Stetz deposition, the difference was an additional \$173.55 for late payment. For the Hardin Kimmel deposition, the difference was an additional \$212.24 for late payment. The total additional cost due to late payment of these three invoices by Cincinnati is \$515.17. Cracker Barrel should

not be held responsible for additional costs based on Cincinnati's late payment of invoices.

CONCLUSION

In view of the foregoing, Cincinnati's Bill of Costs should be reduced to a total of \$8019.10, which reflects deductions for each of the three categories of insufficient, mistaken, or improper costs described above.

Should the Clerk determine that the \$913.95 charge for unexplained exemplification and copying should be borne by Cracker Barrel, Cincinnati's Bill of Costs still should be reduced to a total of \$8933.05, reflecting the deductions for only the duplicative invoices and late fees.

Dated: October 27, 2011

Respectfully submitted,

ANDERSON, KILL & OLICK, P.C.

By: /s/ Cort T. Malone

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